

Application No. 09/868,177
Amdt. dated February 23, 2005
Reply to Office Action of August 22, 2005

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Amendments to the Drawings:

Cancel the first sheet of drawings and substitute therefor the new sheet
of drawings enclosed.

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REMARKS/ARGUMENTS

Petition is hereby made under the provisions of 37 CFR 1.136(a) for an extension of three months of the period for response to the Office Action. Authorization to charge the prescribed fee to our deposit account is enclosed.

The Examiner noted an error in Figure 1 of the drawings, where "Flu/RSV + PCP" should read "Flu/RSV + PCPP". A substitute sheet of drawings is submitted herewith with the drawing corrected.

The Examiner rejected claim 3 on the basis that there is no comma between the last and next to last elements in the list in subpart (a) of claim 3. It is submitted that the current presentation of the components of subpart (a) is grammatically correct and there is no comma missing or needed.

The Examiner maintained, in part, rejection of claims 3, 5 to 14, 20 and 21 under 35 USC 112, first paragraph, on the basis that the specification, while enabling for the claimed immunogenic composition, does not reasonably provide enablement for such composition that are effective for the protection of the host against disease caused by RSV.

The Examiner noted that cancellation of the functional language from claims 3 and 5 to 14 has resulted in withdrawal of the rejection with respect to such claims, but the rejection remained against claims 20 and 21. Claim 20 has been amended to delete the functional language therefrom.

The Examiner rejected claims 3, 5 to 14, 20 and 21 under 35 USC 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention, with respect to the use of the term "immunoeffective amount". The Examiner suggested removal of this term from subparts (a) and (b) of claim 3 and from claim 20. Claims 3 and 20 have been amended in the manner suggested by the Examiner.

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The Examiner also considered that claim 3 did not comply with 35 USC 112, second paragraph, with respect to the use of a trade-mark "Fluzone®" in claim 3.

Claim 3 has been amended to refer to the non-virulent influenza virus preparation being that prepared as described in Example 3.

It is submitted that the claims now fully comply with the provisions of 35 USC 112, second paragraph.

The Examiner rejected claims 3, 5 to 14 and 20 under 35 USC 103(a) as being unpatentable over Cates US or Cates PCT in view of the teachings of Payne or Andrianov and of Huebner.

The Examiner noted that, previously the rejection of the claims had been withdrawn on the basis of unexpected results shown by the applicant in the combination of PCPP, the influenza vaccine Fluzone and the indicated anti-RSV composition. The Examiner further noted that, upon further review, the Examiner considered that Applicant had established unexpected results with only a single combination of 1 µg of RSV composition, 5 µg of Fluzone and 200 µg of PCPP.

Having regard thereto and the Examiner comments, claim 3 has been further amended to recite that the PCPP is present in an amount which imparts the enhanced immune response to RSV.

Having regard to this amendment, it is submitted that the rejection of claims 3, 5 to 14 and 20 under 35 USC 103(a) as being unpatentable over Cates US and Cates PCT in view of Payne or Andrianov and of Huebner, should be withdrawn.

The Examiner rejected claim 21 under 35 USC 103(a) as being unpatentable over Cates US and Cates PCT in view of Payne or Andrianov, and Huebner, further in view of Murry et al or Potash. The Examiner indicates that the rejection is reinstated for substantially the same reasons as identified with respect to claims 3, 5 to 14 and 20. For the same reasons as recited above with respect to

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claims 3, 5 to 14 and 20, it is submitted that the rejection of claim 21 should be withdrawn.

The Examiner rejected claims 3 and 5 to 14 under the judicially-created doctrine of obviousness-type double patenting as being unpatentable over 1, 2 and 6 to 16 of US Patent No. 6,309,649 in view of Payne or Andrianov and Huebner.


The Examiner indicates that the rejection is on substantially the same grounds as indicated with respect to the Cates reference in the Office Action of March 16, 2003, except that the teachings of Payne and Andrianov are used in addition to the teachings of the patent with respect to PCPP and the Huebner reference is used to teach the specific influenza vaccine.

In the light of the changes to the language of claim 3 as discussed above, it is submitted that the rejection should be withdrawn.

The Examiner provisionally rejected claims 3, 5 to 14, 20 and 21 under the judicially-created doctrine of obviousness-type double patenting as being unpatentable over copending application No. 10/488,241 in view of Payne or Andrianov and Huebner. The rejection is a provisional one since the conflicting claims have not yet been patented.

It is believed that this application is now in condition for allowance and early and favourable consideration and allowance are respectfully solicited.

Respectfully submitted,


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